



**BEFORE THE
JUDICIAL STANDARDS COMMISSION**

INQUIRY NO. 08-151

PUBLIC REPRIMAND

**TIMOTHY M. SMITH
DISTRICT COURT JUDGE
JUDICIAL DISTRICT 26**

This matter came to the attention of the Judicial Standards Commission by a written self-report filed with the Commission by Judge Smith. A formal investigation was ordered by the Commission and conducted by the Commission's investigator. During its meeting on February 13, 2009, the Commission completed its review of the investigative report prepared in this matter. The Commission caused a copy of this Public Reprimand to be personally served upon Judge Smith. In accordance with Rule 11 of the Rules of the Judicial Standards Commission, a judge has 20 days within which to accept the Public Reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with Rule 12 of the Rules of the Judicial Standards Commission.

Findings of Fact

1. Timothy M. Smith, was at all times referred to herein a judge of the General Court of Justice, District Court Division, Judicial District Twenty-six and, as such was subject to the Canons of the North Carolina Code of Judicial Conduct, the laws of the State of North Carolina, and the provisions of the oath of office for a district court judge as set forth in the North Carolina General Statutes, Chapter 11.
2. Sometime on or about May 24, 2008, Rebekah Smith Merrill, sister of Judge Smith, appeared before Mecklenburg County Magistrate Claude Little. At the instruction of

Judge Smith, Merrill caused a slip of paper with Judge Smith's cell number to be provided to Little and requested Little contact Judge Smith. Little called Judge Smith whereupon a conversation about Merrill and her circumstances ensued. Little believed Judge Smith was attempting to influence him, but never directed Little to issue a 50B order for Merrill.

3. At approximately 8:50 AM on or about May 27, 2008, Judge Smith entered the Civil Domestic Violence Courtroom through a back entrance, approached Deputy Clerk of Superior Court Robin Creech and requested she add Merrill's case to the morning docket. Creech refused and advised Judge Smith his request was contrary to court policy. Creech further advised Judge Smith that the matter should properly be set for the 1:30 PM session of court rather than the 9:00 AM session. Judge Smith persisted and advised "this case needs to be heard" and "this is my sister". Again Creech refused to honor Judge Smith's request.
4. In the area immediately outside the courtroom on or about May 27, 2008, prior to the Merrill matter being called for hearing, Judge Smith spoke to attorney Jonathan Daniel Feit, attorney of record for Brian Merrill, who was married to Rebekah Merrill. Judge Smith requested Feit not go into the courtroom. Feit advised he needed to go into the courtroom to address matters that involved his client. Judge Smith advised Feit, "This is ex parte, you don't have the right to be heard." Feit stated, "I don't care who you are," to which Judge Smith replied, "Fine". Feit, followed by Judge Smith, walked back into the courtroom, both entering the area inside the bar. Presiding Judge, H. William Constangy, acknowledged Feit and Judge Smith, whereupon a verbal exchange ensued. At some point during the exchange Judge Smith stated, "I would like you to hear this case because things have happened over the weekend." Judge Constangy recessed court and asked all parties to enter the area behind the courtroom. Once outside of the courtroom, Feit asked Judge Smith, "Why are you trying to do this?" Judge Smith replied, "This is my sister and she is in danger." Feit and Judge Smith thereupon engaged in a heated exchange which ended when Judge Constangy announced he would not hear the matter and referred the same to Judge Christy T. Mann.
5. Judge Smith did not attend the hearing before Judge Mann, nor did he attempt to contact Judge Mann prior to her hearing the Merrill matter.
6. Judge Smith apologized to Judge Mann, Judge Constangy, and Feit.
7. Judge Smith cooperated fully with the investigation.

Conclusions

Judge Smith misused the power of his judicial office by attempting to use his official position and influence for the purpose of assisting a family member in a domestic matter in which he had a personal interest. Judge Smith's actions described above evidence a disregard of the principles of conduct embodied in the North Carolina Code of Judicial Conduct, including failure to personally observe appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved (Canon 1), failure to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Canon 2A), using the prestige of his office to advance the private interests of his sister (Canon 2B), and initiating *ex parte* communication in a pending proceeding (Canon 3A(4)). Judge Smith's actions constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute (N.C. Const. art IV, § 17 and N.C.G.S. § 7A-376(a)).

Corrective Action and Acceptance of Terms

Judge Smith agrees that he will not repeat such conduct in the future, mindful of the potential threat any repetition of his conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice.

Judge Smith agrees he will promptly read and familiarize himself with the Code of Judicial Conduct.

Judge Smith further agrees that he will not retaliate against any person known or suspected to have cooperated with the Commission, or otherwise associated with this matter.

Judge Smith affirms he has consulted with, or had the opportunity to consult with counsel prior to acceptance of this Public Reprimand.

I, Timothy M. Smith, hereby accept the terms contained in this Public Reprimand this the 24th day of March , 2009.

ORIGINAL SIGNED BY

Timothy M. Smith

ORDER OF PUBLIC REPRIMAND

Now therefore, pursuant to the Constitution of North Carolina, Article IV, Section 17, the

procedures prescribed by the North Carolina General Assembly in the North Carolina General Statutes, Chapter 7A, Article 30, and Rule 11(b) of the Rules of the Judicial Standards Commission, the North Carolina Judicial Standards Commission, hereby orders that Timothy M. Smith, be and is hereby PUBLICLY REPRIMANDED for the above set forth violations of the Code of Judicial Conduct. Judge Smith shall not engage in such conduct in the future and shall fulfill all of the terms of this Public Reprimand as set forth herein.

Dated this the _1st_ day of _____April_____, 2009.

ORIGINAL SIGNED BY

John C. Martin, Chairman
Judicial Standards Commission